

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

Technical Analysis

**Proposed Administrative Civil Liability
Contained in
Amended Complaint No. 2001-188
William P. Johnson
&
Vail Lake, LLC**

Riverside County

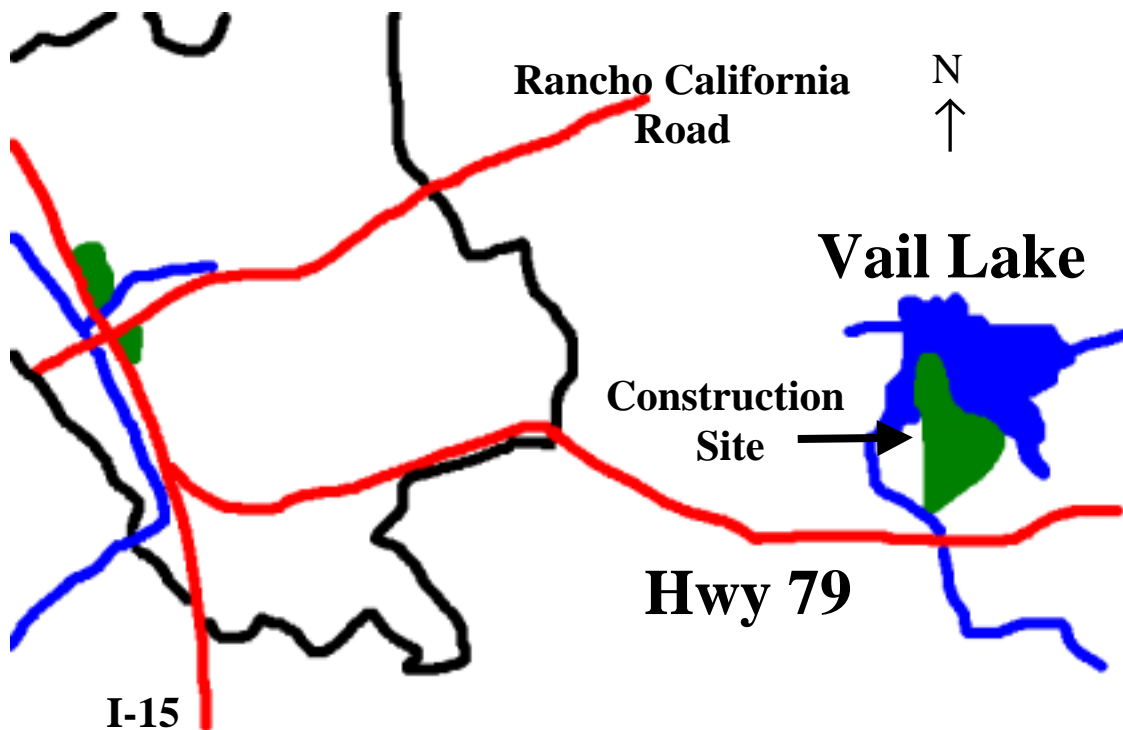
31 January 2002

1. INTRODUCTION

This report provides a summary of factual and analytical evidence supporting administrative assessment of civil liability against Vail Lake, LLC and William P. Johnson for violations of California State Water Resources Control Board (State Board) Water Quality Order No. 99-08-DWQ and California Water Code sections 13376, 13383 and 13385 as alleged in Complaint No. 2001-188, as amended (See *Appendix A, Amended Complaint No. 2001-188.*) and analyzes the evidence in the context of the statutory factors to be considered in assessing liability for the alleged violations.

2. BACKGROUND

Land developer William P. Johnson is the “Owner/Agent” for Vail Lake, LLC (See *Appendix B, Notice of Intent to comply with the terms of the General Permit to Discharge Storm Water Associated with Construction Activity [WQ Order No. 99-08-DWQ].*). Vail Lake, LLC owns the 132 acre property located along the south shore of Vail Lake in Riverside County, California, where it plans to build estate homes. The following map shows the location of the site and the site’s receiving waters.



3. REGULATORY FRAMEWORK

On 19 August 1999 the State Water Resources Control Board adopted *Order No. 99-08-DWQ, NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity*. Order No. 99-08-DWQ implements federal regulations for storm water discharges introduced into the National Pollutant Discharge Elimination System (NPDES) in 1990 to implement amendments calling for regulation of storm water discharges under section 402 of the

Clean Water Act (33 USC 1342, subdivision p; regulations addressing storm water are codified in Title 40 of the Code of Federal Regulations [CFR] in Parts 122, 123, and 124; see 40 CFR 122.26.). The NPDES regulations require operators of specific categories of facilities where discharges of storm water associated with *industrial activity*¹ occur to obtain a “permit” and to implement Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology (BAT/BCT)² to eliminate industrial storm water pollution.

Order No. 99-08-DWQ replaced the initial requirements issued in 1992. The requirements in Order No. 99-08-DWQ regulate the discharge of storm water associated with construction activity. Construction activity is subject to the requirements in Order No. 99-09-DWQ, if there is clearing, grading, or disturbances to the ground (such as stockpiling or excavation) that results in soil disturbances of five acres or more of total land area. Property owners or developers engaged in construction activity subject to the requirements in Order No. 99-08-DWQ must file a Notice of Intent (NOI) with the State Board and prepare and implement a site specific Storm Water Pollution Prevention Plan (SWPPP)³ prior to the start of construction activity.

4. ALLEGATIONS

The following allegations against William Johnson and Vail Lake, LLC in Complaint No. 2001-188 as amended on 15 August 2001, are the basis for assessing administrative civil liability pursuant to California Water Code section 13385.

4.1. William Johnson and Vail Lake, LLC Failed to File a Notice of Intent (NOI) in Violation of CWC § 13376, and Order No. 99-08-DWQ § C.1

William Johnson and Vail Lake, LLC conducted construction activities at the Vail Lake site without filing for coverage under the Construction Storm Water Permit from 07 July 1999 (date construction began) until 26 February 2001 (date NOI received) resulting in 600 days of violation.

4.2. William Johnson and Vail Lake, LLC Failed to Submit Technical Report in Violation of CWC §§ 13267 and 13383

William Johnson and Vail Lake, LLC failed to submit a technical report on 31 May 2000 as required by the Regional Board pursuant to CWC sections 13267 and 13383. This report will be 622 days late by 13 February 2002. The Regional Board has repeatedly requested the information from Mr. Johnson and Vail Lake, LLC however the information has not been submitted.

¹ Construction activity falls under the federal definition of “industrial activity.” See 40 CFR 122.26(b)(14)(x).

² BAT/BCT as defined in sections 301 and 402 of the federal Clean Water Act.

³ A SWPPP “specifies Best Management Practices (BMPs) that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.” (Construction Storm Water Permit, Fact Sheet, page 1) See also page 6 of the Fact Sheet for greater SWPPP details.

5. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Pursuant to CWC section 13385 (a),

Any person who violates any of the following shall be liable civilly in accordance with this section:

1. Section 13375 or 13376 [Reports of discharges, e.g., the Construction Storm Water Permit].
2. Any waste discharge requirements or dredged and fill material permit.
3. Any requirements established pursuant to Section 13383 [e.g., request for technical report].

Furthermore, CWC section 13385 (c) provides that

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

5.1. Factors to be Considered in Determining the Amount of Administrative Civil Liability

Section 13385 (e) of the CWC requires that the following factors be taken into consideration in determining the amount of civil liability: the nature, circumstances, extent, and gravity of the violation; and with respect to the violator, the ability to pay; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any derived from the acts that constitute the violation.

5.2. Failure to File Notice of Intent (NOI)

5.2.1.1. Nature, Circumstances, Extent, and Gravity of the Violation

William Johnson and Vail Lake, LLC failed to file a Notice of Intent for the Vail Lake site, with the State Board as required by Order No. 99-08-DWQ until 26 February 2001, 600 days after beginning construction (See *Appendix B, Notice of Intent for Vail Lake site.*). California Water Code (CWC) section 13376 requires that “any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state...shall file a report of the discharge in compliance with the procedures set forth in Section 13260,...” For construction activity, this is accomplished by filing a Construction Storm Water Permit Notice of Intent (NOI).

Section C.1. of Order No. 99-08-DWQ’s waste discharge requirements states that “[a]ll dischargers shall file an NOI and pay the appropriate fee for construction activities conducted at each site as required by Attachment 2: Notice of Intent – General Instructions.” The Construction Storm Water Permit’s “General Instructions” state that “[d]ischarges of storm water associated with construction that results in the disturbance of five acres or more of land must apply for coverage under the General Construction Activities Storm Water Permit (General Permit).”

In response to citizen concerns over storm water pollution, the state legislature in 1998 made the following findings: “(a) Unregulated storm water runoff is a leading cause of contamination of the state’s surface water and groundwater. (b) Noncompliance with existing federal and state storm water regulations hinders the state’s ability to attain its water quality objectives.” Regulatory agencies like the Regional Board lack notice of construction activities when dischargers fail to file a NOI, resulting in the agency’s inability to verify the existence and implementation of a site specific SWPPP. Coupled with a historical and widespread disregard of the NOI filing obligations by the building industry contributes to the adverse water quality consequences of inadequate SWPPPs and SWPPP implementation.

On 07 July 1999, construction activity began at the 132 acre site located above Vail Lake in southern Riverside County, California (See *Appendix B, sections IV.A and H, Notice of Intent for Vail Lake, LLC site.*). A site inspection was initiated after receiving a complaint about illegal grading and the application of sludge/biosolids around Vail Lake. A review of the State Board's Notice of Intent (NOI) database revealed that the site was not covered under the Construction Storm Water Permit. After difficult negotiations with Mr. Johnson's attorney, a comprehensive site inspection was conducted on 01 March 2000, which confirmed the lack of coverage under the Construction Storm Water Permit and the failure to have a Storm Water Pollution Prevention Plan (SWPPP) (See *Appendix C, 29 February 2000 Nossaman, Guthner, Knox & Elliott, LLP letter*). Furthermore there were signs of erosion (rills and gullies) caused by the road and pad grading, and the inadequacy of Best Management Practices⁴ (BMPs) to prevent erosion, control sediment, and reduce pollutants in storm water runoff (See *Appendix D, 01 March 2000 Inspection Report, page 2, section II, Findings.*).

These violations were communicated to William Johnson and Vail Lake, LLC on 10 May 2000 in Notice of Noncompliance No. 2000-098 (See *Appendix E, NOV No. 2000-098.*). The Notice also contained the Construction Storm Water Permit with a blank NOI and instructions on filing for permit coverage. The Notice also directed Mr. Johnson pursuant to California Water Code sections 13267 and 13383 to submit information concerning his activities by 31 May 2000. On 23 June 2000, the Regional Board sent Mr. Johnson and Vail Lake, LLC a second Notice of Noncompliance No. 2000-141 for failing to obtain coverage under the Construction Storm Water Permit and for failing to submit the requested information.

Again after difficult negotiations, another inspection was arranged for on 05 January 2001. The inspection with project manager Csaba Ko revealed no changes to the site since the March 2000 inspection. Furthermore, the site was

⁴ BMPs "means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of 'waters of the United States.' BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." (40 CFR § 122.2)

still not covered under the Construction Storm Water Permit and a SWPPP had not been developed. William Johnson filed a Notice of Intent for Vail Lake, LLC, with the State Board on 26 February 2001, 600 days after beginning construction (See *Appendix B, Notice of Intent for Vail Lake site.*). The NOI submitted by William Johnson for the construction site identifies “Vail Lake, LLC [Limited Liability Company]” as the Property Owner and “Bill Johnson, Owner/Agent” as the Contact Person (See *Appendix B, Notice of Intent for Vail Lake site.*). Complaints for administrative civil liability were issued by the Executive Officer on 14 June 2001 to Mr. Johnson for violations at the Vail Lake, Rancho California Highlands II, and North Plaza construction sites. These complaints were amended on 15 August 2001 to correct violation allegations.

The site continues to be in noncompliance with Order No. 99-08-DWQ (i.e., no SWPPP has been developed and adequate BMPs have not been installed). Each inspection has revealed inadequate BMPs and another promise to bring the site into compliance. Furthermore, the 2002 \$250 annual fee for the site is past due.

5.2.1.2. Degree of Culpability

Mr. Johnson and Vail Lake, LLC were directly informed by the Regional Board during inspections of the inadequate BMPs and advised them about how to bring construction activities at the site into compliance with requirements for the implementation of BMPs in Order No. 99-08-DWQ. Furthermore, the Regional Board notified Mr. Johnson and Vail Lake, LLC of their failure to implement BMPs in writing on 11 January 2001 (See *Appendix F, Regional Board letter.*), and after the August and November 2001 Regional Board inspections (See *Appendix G, H and I, August and November 2001, and January 2002 Inspection Reports.*). A notation of inadequate BMPs was made each and every time the Regional Board visited the site. Despite such notification and technical assistance, William Johnson and Vail Lake, LLC did not correct deficiencies in their construction activities or implement effective BMPs.

William Johnson is a sophisticated and experienced real estate developer. Mr. Johnson owns and operates the Coldwell Banker Realty office of Johnson + Johnson

located in Temecula, and at least six other real estate related businesses (See *Appendix J, Newspaper Article, 02 July 2000.*). On 26 July 2000, "The Californian," the Temecula/Murrieta area newspaper, characterized William Johnson and his wife as "prominent landowners who have helped develop more than 50,000 acres in the Temecula Valley over the last three decades." William Johnson's current plans for the Temecula area include a convention center anchored by a Hilton Hotel franchise, and a master-planned community of 5,172 houses, condominiums, apartments, and three golf courses (See *Appendix K, Newspaper Article, 29 August 2000; Appendix L, Newspaper Article, 24 December 2000; and Appendix M, Newspaper Article, 19 August 2001.*).

Mr. Johnson and Vail Lake, LLC had ample notification and opportunity to become aware of the need to file a NOI and to bring the site into compliance. In 1992 the State Board issued the Construction Storm Water Permit. The Regional Board issued its first Administrative Civil Liability (ACL No. 94-20) against a Temecula developer in 1994 for failing to file a Construction Storm Water Permit NOI and for sediment discharge violations. The \$306,000 administrative civil liability was highly publicized and reverberated throughout the southern Riverside County developer community.

William Johnson has been developing large construction projects in the Temecula area over the last 30 years, during which time the regulation of storm water runoff from construction projects has become an increasingly high-profile activity of the Regional Board, and has been extensively publicized within the building and development industry. William Johnson was personally notified by the Regional Board twice in writing (two notices for this site and three other notices for two other sites [North Plaza and Rancho California Highlands II]) and by telephone of the need to file a NOI at each site. William Johnson's lack of communication with the Regional Board regarding a regulatory obligation that Mr. Johnson was aware of, and had been reminded of, indicates a degree of culpability beyond mere negligence. Each of the five notices informed Mr. Johnson that failure to file a NOI for each site could result in the administrative assessment of civil liability by the Regional Board. All of this information reflects, at

least, a failure of William Johnson and Vail Lake, LLC, to exercise reasonable care under the circumstances, and might be characterized as “knowing,” or “intentional.”

5.2.1.3. Prior History of Violations

William Johnson has been issued a total of seven notices for the North Plaza project, three notices for the Rancho California Highlands II construction site, and two NOVs for the Vail Lake construction site for violations of Order No. 99-08-DWQ. The notices were issued for the same type of violations as alleged at the Vail Lake site. William Johnson failed to file a NOI for North Plaza, LLC, with the State Board as required by Order No. 99-08-DWQ until 06 September 2000, 510 days after beginning construction. At the Rancho California Highlands II site, William Johnson failed to file a NOI with the State Board until 17 January 2001, 351 days after construction began.

5.2.1.4. Economic Savings

William Johnson and Vail Lake, LLC, achieved economic benefits of approximately \$142,852 during the violation period as a result of their delay in filing a NOI, paying their fees, preparing a SWPPP, implementing the SWPPP, and monitoring and reporting their compliance. William Johnson and Vail Lake, LLC saved approximately \$36,899 by delaying development and implementation of a monitoring program; \$13,217 by delaying SWPPP development; \$91,955 by delaying SWPPP implementation; \$330 by failing to submit a portion of the 1999 annual fee, \$199 by failing to submit a portion of the 2000 annual fee, and \$252 for failing to pay the 2002 annual fee. See *Appendix N, Economic Savings Calculations*. Compliance with Order No. 99-08-DWQ has associated costs and developers that are currently in compliance are at an economic disadvantage compared to developers that are not. The BEN version 2.0 computer model was developed by the US EPA to calculate economic savings by persons or entities subject to NPDES requirements who have failed to incur some or all of these costs.

5.2.1.5. Ability to Pay

The Regional Board has not received any documentation that William Johnson or Vail Lake, LLC is unable to pay

the proposed ACL or how payment of the proposed ACL would affect their ability to remain in business. However, the estimated value of the Vail Lake property is \$100,000,000.

5.2.1.6. Other Matters as Justice May Require

Over the course of trying to resolve this matter with William Johnson and Vail Lake, LLC, the Regional Board has devoted an estimated 260 hours to investigate and consider action regarding this matter. At an average rate of \$80 per hour, the total cost incurred by the Regional Board is \$20,800.

5.2.2. Failure to Submit Technical Report Pursuant to California Water Code Sections 13267 and 13383

5.2.2.1. Nature, Circumstances, Extent, and Gravity of Violation

During inspections of 25 February 2000 and 01 March 2000, the Regional Board noted the recent grading, the inadequacy of Best Management Practices (BMPs), and erosion rills and gullies (See *Appendix O, 25 February 2000 Inspection Report and Appendix D, 01 March 2000 Inspection Report.*). To better determine the discharger's compliance with Order No. 99-08-DWQ, the Regional Board on 10 May 2000 requested pursuant to Water Code section 13267 and 13383 that Mr. Johnson and Vail Lake, LLC submit the following information by 31 May 2000: (1) a copy of the Storm Water Pollution Prevention Plan (SWPPP) for the Vail Lake; (2) a copy of the grading permit with the County of Riverside; (3) date construction activity began; (4) amount of land impacted and amount of fill moved; (5) amount of material placed in the creek bed; (6) delineation of jurisdictional wetlands and waters; (7) map or plan of topography, plant communities; (8) a figure delineating impacts to the creek bed; and (9) description of mitigation measures for permanent and temporary impacts to waters of the State (See *Appendix E, 10 May 2000 Notice No. 2000-098.*).

On 23 June 2000 the Regional Board notified via certified mail Mr. Johnson and Vail Lake, LLC of the failure to submit the necessary information (See *Appendix P, 23 June 2000 Notice No. 2000-141.*). During follow-up inspections

on 10 August and 14 November 2001, a Vail Lake, LLC representative, Csaba Ko was informed of the continued failure to submit the required information. During the 14 November 2001 inspection Mr. Johnson promised to submit the required information, however the Regional Board has not received the information.

Under CWC section 13267, the Regional Board “may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region...shall furnish, under penalty of perjury, technical or monitoring program reports....” The Regional Board has similar authority under CWC section 13383 to require a report submittal for pollutant discharges to navigable waters.

The foundation of the State’s regulatory program relies on dischargers to accurately and honestly report information required by the Regional Board. Failure to submit requested information erodes the State’s regulatory program and places the health of the public and the environment at risk. The Regional Board considers a report to be received, if the report is timely submitted and adequately provides the information requested. Therefore, a timely submitted report that fails to adequately cover all of the requested information is not considered received.

The Regional Board has repeatedly asked Mr. Johnson and other Vail Lake, LLC representatives to satisfy the information request, however the Regional Board has not received the information, and the violation continues. The violation period is from 01 June 2000 to 13 February 2002, for a total of 622 days. The absence of information prevents the Regional Board from fully assessing the site’s compliance and evidences a lack of organization to bring the site into compliance.

5.2.2.2. Degree of Culpability

William Johnson and Vail Lake, LLC knowingly failed to provide the Regional Board with an adequate technical report required pursuant to sections 13267 and 13383 of the Water Code. Mr. Johnson and Vail Lake, LLC received the request for technical report submittal. Furthermore, the Regional Board issued a Notice of Violation to William Johnson and Vail Lake, LLC 23 days after the information

was due. Both the technical report request and NOV stated that failure to submit the required information could result in the assessment of civil liability by the Regional Board.

Other efforts were made to increase the likelihood that the requested information would be submitted. On 11 January 2001 the Regional Board hand-delivered to Csaba Ko, project manager, all correspondence between the Regional Board and William Johnson and Vail Lake, LLC regarding the regulatory deficiencies at the project to that point in time (Inspection Reports, Notices, Technical Report Requests, etc.) (See *Appendix F, Regional Board Letter*). Mr. Ko promised to keep an open line of communication and to resolve all violations. The Regional Board promised to provide Mr. Ko with copies of all future correspondence with Mr. Johnson, and Vail Lake, LLC. On 10 August 2001, the Regional Board met at the construction site with Vail Lake, LLC representatives, Csaba Ko and Attorney Paul Singarella. Mr. Ko requested that the Regional Board forward all Regional Board correspondence requesting information and review of submitted information for the Vail Lake, North Plaza, and Rancho California Highlands II construction sites directly to their Engineering Consultant Michael Tylman. On 13 August 2001, the Regional Board provided the documents to Mr. Tylman.

William Johnson and Vail Lake, LLC knew of the requirement to provide specified information to the Regional Board within specified deadlines. In view of the repeated contacts between the Regional Board and the representatives of William Johnson and Vail Lake, LLC, both before and after the technical report was due, the failure to submit the report and the lack of communication on the part of Mr. Johnson and Vail Lake, LLC reflects, at least, a failure to exercise reasonable care under the circumstances, and might be characterized as a “knowing” or “intentional” violation of the requirements to provide information to the Regional Board.

5.2.2.3. Prior History of Violations

William Johnson received two Regional Board Notice of Violations (NOVs) at the Vail Lake project, seven NOVs for his North Plaza construction site, and three NOVs for his Rancho California Highlands II construction site for violations of Order No. 99-08-DWQ. The NOVs were

issued for the same type of violations as alleged at the Vail Lake site. William Johnson failed to submit two technical reports for North Plaza, LLC, and one technical report at Rancho California Highlands II. He has since supplied the necessary information.

5.2.2.4. Economic Savings

William Johnson and Vail Lake, LLC achieved economic benefits of approximately \$5,626 by failing to submit the required Technical Report to the Regional Board. See *Appendix O, Economic Savings Calculations*. The BEN version 2.0 computer model was developed by the US EPA to calculate economic savings by persons or entities subject to NPDES requirements who have failed to incur some or all of these costs.

5.2.2.5. Ability to Pay

See section 5.1.1.5.

5.2.2.6. Other Matters as Justice May Require

See section 5.1.1.6.

5.3. Minimum and Maximum Civil Liability Amounts

Section 13385 (c) of the Water Code provides that

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

In addition, Subdivision (e) of Section 13385 requires that

At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

Violation	Days of Violation	Maximum Liability¹ (\$10,000/Day)
Failure to File Notice of Intent (NOI)	600	\$6 million
Failure to Submit Report	622	\$6.22 million

¹ There is no minimum liability associated with WC section 13385.

² The Regional Board may rely on circumstantial evidence to find that the violation encompassed a specific time period (i.e., from one inspection to the next) in lieu of a day specific violation.

5.4. Civil Liability Per Violation

The amount of civil liability attributable to each violation was determined by taking into consideration the factors discussed in section 5.1. as well as the minimum and maximum civil liability the Regional Board may assess as discussed in section 5.2.

5.4.1. Failure to File Notice of Intent (NOI)

Mr. Johnson and Vail Lake, LLC were given substantial notice of their failure to file a NOI. The State Board recognizes that the failure to file for permit coverage is a significant violation that provides Mr. Johnson and Vail Lake, LLC a competitive advantage; results in unregulated discharges of storm water runoff, a leading cause of contamination of the state's surface water and groundwater; and this noncompliance hinders the state's ability to attain its water quality objectives. Furthermore, Mr. Johnson's longstanding background as a developer in the community, the previous Temecula construction ACL in 1994 and the State's issuance of the Construction Storm Water Permit in 1992 provided additional evidence that Mr. Johnson and Vail Lake, LLC should have known of the requirements to obtain permit coverage and to implement BMPs at construction projects.

Although Mr. Johnson and Vail Lake, LLC did ultimately file the requisite NOI for the project, Mr. Johnson and the development ventures under his control failed to file NOIs at other sites being developed by Mr. Johnson or by entities controlled by Mr. Johnson. Instead Mr. Johnson and the development ventures controlled by Mr. Johnson in each case failed to file the requisite NOI until after receiving separate, site specific, Notices of Violation from the Regional Board. It should be noted that, although Mr. Johnson and his development ventures have filed NOIs for three construction sites being developed by Mr. Johnson and his development ventures, neither Mr. Johnson, nor any of the development ventures under his control, complied with the substantive requirements of Order No. 99-

08-DWQ at the three sites until faced with the assessment of liability. This refusal to file except under threat of enforcement, and refusal to develop or implement storm water pollution prevention or control measures, in the face of concerted efforts by the Regional Board to compel compliance, indicate intentional recalcitrance by Mr. Johnson and the development ventures under his control. Therefore, administrative civil liability in the amount of \$600 per day of violation is appropriate. At Vail Lake there were 600 days of violation for a total liability of \$360,000.

5.4.2. Failure to Submit Technical Report Pursuant to California Water Code Sections 13267 and 13383

Mr. Johnson and Vail Lake, LLC were notified of their failure to submit the report and the potential assessment of administrative civil liability by the Regional Board. To date, Mr. Johnson and Vail Lake, LLC have failed to submit a report that provides all of the technical and monitoring information requested by the Regional Board. Although, Mr. Johnson and Vail Lake, LLC, through their representative, Csaba Ko assured the Regional Board that an adequate report would be submitted, neither Mr. Johnson nor Vail Lake, LLC has submitted the report.

The State Board in its *Guidance to Implement the Water Quality Enforcement Policy* ranks failure to submit a report within 30-days from the due date as a significant violation. Failure to submit requested information erodes the State's regulatory program by diverting investigative and enforcement resources to verify compliance from other, perhaps more environmentally threatening cases. The administrative civil liability for failing to submit the technical report in the amount of \$100 per day of violation is appropriate. Civil liability for 622 days of violation at this rate would be \$62,200.

5.5. Comparison of Civil Liability to State Board Guidance to Implement the Water Quality Enforcement Policy, Assessment Matrix

The State Board *Guidance to Implement the Water Quality Enforcement Policy* contains an Assessment Matrix as seen below. The matrix is based on the Regional Board's assessment of the "Compliance Significance" and "Environmental Significance" of each violation; violations may be ranked as "Minor," "Moderate" or "Major." Based upon the determination of the two categories, the State Board offers a range of appropriate civil liability. The Regional Board may use the Assessment Matrix in comparing civil liability calculated according to consideration of the factors in section 5.1. with the ranges of civil liability suggested by the State Board in the Assessment Matrix to promote statewide consistency in enforcement.

Assessment Matrix

Compliance Significance	Environmental Significance		
	Minor	Moderate	Major
Minor	\$100 - \$2,000	\$1,000 - \$20,000	\$10,000 - \$100,000
Moderate	\$1,000 - \$20,000	\$10,000 - \$100,000	\$50,000 - \$200,000
Major	\$10,000 - \$100,000	\$50,000 - \$200,000	\$100,000 to maximum amount

5.5.1. Failure to File Notice of Intent (NOI)

Mr. Johnson and Vail Lake, LLC displayed a high level of culpability and the state has found that unregulated storm water runoff is a leading cause of contamination of the state's surface water and groundwater. Furthermore, noncompliance with the federal and state storm water regulations hinders the state's ability to attain its water quality objectives. Therefore the "Compliance Significance" is "Major" and the "Environmental Significance" is "Moderate" representing a potential liability of \$50,000 to \$200,000. Although a civil liability of \$360,000 is above the matrix range, the extraordinarily long period of violation makes this a particularly egregious instance of non-compliance despite the "Moderate" environmental threat involved.

5.5.2. Failure to Submit Technical Report Pursuant to California Water Code Sections 13267 and 13383

The State Board in its *Guidance to Implement the Water Quality Enforcement Policy* ranks failure to submit a report within 30-days from the due date as a significant violation. Again Mr. Johnson and Vail Lake, LLC's culpability is high, however the threat to water quality for failing to submit a requested report is not as high. Therefore the "Compliance Significance" is "Major," while the "Environmental Significance" is "Minor" representing a liability range of \$10,000 to \$100,000. Civil liability of \$62,200 is within the matrix range.

5.6. TOTAL ADMINISTRATIVE CIVIL LIABILITY

The total civil liability in this matter, accounting for all violations is \$422,200.

Violation	Days of Violation	Proposed	
		Liability/Day	Liability
Failure to file Notice of Intent (NOI)	600	\$600	\$360,000
Failure to submit report	622	\$100	\$62,200
Total			\$422,200